

## A S P E R G E R A S S O C I A T E S L L C

## ATTORNEYS AT LAW

Jeffrey J. Asperger  
 Direct: 312/240-0795  
 Email: [jasperger@aspcar.com](mailto:jasperger@aspcar.com)

April 1, 2005

The Honorable James K. Bredar  
 United States Magistrate Judge  
 U.S.D.C. for the District of Maryland  
 101 West Lombard Street  
 Baltimore, MD 21201

Re: In the Matter of the Complaint of  
 Eternity Shipping, Ltd., et al.  
 For Exoneration from or Limitation of Liability  
Civil Action No.: L-01-CV-0250

Dear Judge Bredar:

In accordance with your Order of February 24, 2005 (document no. 122), and “[o]n the assumption that a modification to the discovery schedule order will be required,”<sup>1</sup> we have conferred with counsel for American Bureau of Shipping (“ABS”) and counsel for Eternity Shipping (“ESL”) in accordance with Local Rule 104.7 in an attempt to reach an agreement on the discovery schedule modification. The parties generally agree as to the nature and scope of the necessary modification, with one exception, and we seek your assistance in that regard.

It is our position and understanding from the February 24, 2005 Order, that the parties were to reach an agreement as to reopening fact discovery for the deposition of Captain Heiner Popp and to allow Tate & Lyle to establish its own expert evidence on the wire rope issue, which largely affects ABS’s motion for summary judgment. In part, the issue involves whether there was existing damage to the wire rope at the time of the ABS inspection. In addition, the parties have been seeking throughout discovery in this case the *de benne esse* deposition of Bosun Balita, who resides in the Philippines. Tate & Lyle and ESL have agreed to pursue this deposition during whatever additional time you allow.

We believe there is but one issue which requires your input. Counsel for ABS and ESL will not agree to a discovery schedule modification if it will delay ruling on the pending motions. It is our position that fact discovery which bears on the wire rope issue may be germane to the pending motion(s) for summary judgment. It was our interpretation that this was the reason for a limited reopening of discovery. We will ask leave to supplement our responses to the extent that additional evidence or

<sup>1</sup> Memorandum and Order of 02/24/05 at 3, ¶2



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facts are developed which bear on the pending motions.

Counsel for ABS has indicated that he will be sending separate correspondence regarding ABS's position.

As we are unable to reach complete agreement for a joint submission to modify the discovery schedule, we respectfully request clarification of the February 24, 2005 Order on this remaining issue. Due to scheduling conflicts, counsel for ESL has requested 120 days for completing this additional discovery. We have no objection to this request.

Thank you for your assistance in this regard.

Respectfully,

ASPERGER ASSOCIATES LLC

Jeffrey J. Asperger  
One of the attorneys for Tate & Lyle

JJA:cmc  
cc: All Counsel of Record